

1 ROB BONTA
2 Attorney General of California
3 PREETI K. BAJWA
4 Supervising Deputy Attorney General
5 ERIC MIER SMA
6 Deputy Attorney General
7 State Bar No. 190819
8 600 West Broadway, Suite 1800
9 San Diego, CA 92101
10 Telephone: (619) 738-9061
11 Fax: (916) 732-7920
12 E-mail: Eric.Miersma@doj.ca.gov
13 *Attorneys for Defendants*
14 *M. Bloise, R. Diaz, R. Feston, M. Taylor, R. Davis,*
15 *Y. Franco, and T. Duke*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

C. JAY SMITH, et al.,

4:20-cv-04335-HSG

Plaintiff,

V.

R. DIAZ, et al.,

Defendants.

**STIPULATION AND REQUEST BY
BOTH PARTIES TO VACATE *ALBINO*
EVIDENTIARY HEARING AND
RELATED DATES AND SET TRIAL
SETTING CONFERENCE; ORDER (as
modified)**

Judge: Hon. Haywood S. Gilliam, Jr.
Trial Date: None Set
Action Filed: June 29, 2020

The parties respectfully submit this Stipulation and Request by both Parties to Vacate the *Albino* Evidentiary Hearing and Related Dates and Set Trial Setting Conference, and Order regarding same. This Stipulation and Request is based on the following:

WHEREAS, an *Albino* evidentiary hearing is scheduled before this Court for June 30, 2025, and July 1, 2025.

WHEREAS, the United States Supreme Court issued an opinion on June 18, 2025, in the case *Perttu v. Richards*, No. 23-1324, 605 U.S. _____ (2025), 2025 U.S. LEXIS 2380, that directly affects factual and legal issues that were to be determined in the evidentiary hearing.

1 WHEREAS, the Court has ordered the parties to submit briefing on whether the question of
 2 exhaustion in this case is intertwined with the merits of Plaintiff's claims such that a jury trial is
 3 required under *Perttu v. Richards*, No. 23-1324, and the evidentiary hearing should be vacated
 4 (ECF No. 170).

5 WHEREAS, the parties agree that the factual issues regarding exhaustion are intertwined
 6 with the factual issues regarding the merits of Plaintiff's claims.

7 WHEREAS, the parties agree that all pending factual issues to be decided at the evidentiary
 8 hearing should be included in a jury trial in this matter.

9 WHEREAS, the parties agree that the evidentiary hearing and all related dates should be
 10 vacated, and a Trial Setting Conference should be set by the Court.

11 THEREFORE, IT IS HEREBY STIPULATED AND REQUESTED, by and between the
 12 parties, through their respective counsel of record, and subject to Court approval, that the June 30,
 13 2025, and July 1, 2025, evidentiary hearing and all related dates be vacated, that all pending
 14 issues to be heard at the evidentiary hearing be included in a jury trial in this matter, and that the
 15 Court should set a Trial Setting Conference.

16 IT IS SO STIPULATED.

17 Dated: December 9, 2024

Orthwein Law, PC

18

19

By: /s/Jennifer Orthwein

20

Jennifer Orthwein

21

Attorneys for Plaintiff C. Jay Smith

22

23

Dated: December 9, 2024

CALIFORNIA ATTORNEY GENERAL'S OFFICE

24

25

By: /s/Eric Miersma

26

Eric Miersma, Deputy Attorney General
 Attorneys for Defendants

27

28

SA2021400482
 85204279.docx

ATTESTATION

I hereby attest that all other signatories listed, whose signatures are indicated by a conformed signature (“/s/”), and on whose behalf this filing is submitted, concur in the filing’s content and have authorized the filing.

Dated: June 20, 2025

CALIFORNIA ATTORNEY GENERAL'S OFFICE

By: /s/*Eric Miersma*

Eric Miersma, Deputy Attorney General
Attorneys for Defendants

ORDER

Having read and considered the Stipulation, Good Cause appearing, the Court grants the parties' request and vacates the June 30, 2025, and July 1, 2025, evidentiary hearing and all related dates, directs that all pending issues to be heard at the evidentiary hearing be included in a jury trial in this matter. A Case Management Conference via a Zoom webinar is set for July 1, 2025 before Judge Haywood S. Gilliam, Jr., at 2:00 p.m. No case management statement is due. All attorneys and pro se litigants appearing for the case management conference are required to join at least 15 minutes before the hearing to check-in with the CRD. The Zoom information is: <https://canduscourts.zoomgov.com/j/1607976056?pwd=aW5IeE14UkJRbkdPTGJFWFUUrRG1Cdz09> Webinar ID: 160 797 6056/Passcode: 129759.

It is so ordered.

DATED: 6/24/2025

Haywood S. Gilliam Jr.
The Honorable Haywood S. Gilliam Jr.